



## NOT TAXED ENOUGH?

Michelle Steel, Board of Equalization Member

February 23, 2010

*[Publisher's Note: As part of an ongoing effort to bring original, thoughtful commentary to you here at the FlashReport, I am pleased to present this column from Board of Equalization Member Michelle Steel. - Flash]*

*If you are new to the FlashReport, please check out the [main site](#) and the acclaimed FlashReport Weblog on California politics.*

As part of the Democrat's budget stopgap plan, the Senate, on Thursday, passed a bill (AB8x 8) that would require out-of-state online retailers to charge tax on purchases made by California residents. This is just one more attempt at a tax grab by politicians looking to squeeze every drop of tax revenue from Californians that are already squeezed out.

The Legislature can only require California businesses to comply with its laws. It can't require business in Alaska or New York to follow California law. This bill tries to make these out-of-state companies into California companies by saying their advertisers are their employees.

But there's more: the State Board of Equalization is already scrambling – and spending our tax dollars – to educate taxpayers on how to report use tax on out of state purchases. Use tax is the equivalent of sales tax, and it is owed on products for which sales tax was not paid - mainly products bought out of state (like those bought on Amazon.com).

Currently Californians can pay their use tax on their income tax returns, or file use tax returns independently with the Board. Last July, the legislature passed a bill that requires businesses that do \$100,000 or more in business to register for use tax permits with the Board and file annually starting this April 15.

With the recent push to enforce the use tax, this new "Amazon tax" is either duplicative, or it's moot: either way, it's a waste of time and money to require Californians to register with the Board to pay use tax while at the same time making out-of-state companies pay the very same taxes. What a waste.

This isn't just about wasteful legislation. Online companies will cancel their advertising programs in California to avoid the tax, killing California jobs.

When a similar bill was floated last summer in the Assembly, online retailer Overstock.com, closed its advertising relationships in California. Overstock didn't return until Governor Schwarzenegger vowed to veto the bill. Needless to say, that bill died immediately.

The Governor's Press Secretary, Aaron McLearn, indicated that the Governor's position hasn't changed since then, saying AB8x 8 would be "a very tough sell."

That's a good start, but this bill should not only be a "tough sell," it should be a "no sell." Our legislators should be in serious discussions over the best way to solve our \$20 billion deficit; the Governor can help them stay on track by giving them clear guidance. Closing the deficit with no new taxes means, NO NEW TAXES, and the Governor should make that clear by vowing to veto this and any new tax that comes to his desk. Maybe that way the legislature can take a hint and focus on solutions that will pass muster.

This bill may also be unconstitutional. It appears to conflict with the Supreme Court's ruling in Quill v. North Dakota which established that "physical presence" in a state is required for the state to impose tax collecting duties on a company: things like employees and buildings. If this bill passes we're in for a rash of litigation: lawyers, on both sides, will get rich while Californians lose jobs, and businesses wonder whether or not they have to comply. California is already too deep in the dirt to get mired in this muck.